

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

July 18, 2024

Adrian Fontes
Office of the Secretary of State
1700 W. Washington St Fl 7
Phoenix AZ 85007-2808

Re: Enforcement of Elections Procedures Manual's Vote Nullification Provision

Dear Secretary Fontes:

We write to you on behalf of our clients, American Encore, Karen Glennon, and Arizona Free Enterprise Club ("Free Enterprise") (collectively, "Clients"), who have filed suit against your office regarding the 2023 Elections Procedures Manual ("EPM"). *See American Encore v. Fontes*, No. 2:24-cv-01673-MTL (D. Ariz. filed July 8, 2024). We are writing to you regarding Chapter 13, Section III.B(2) of the 2023 EPM, pp. 252 ("Vote Nullification Provision"), which is one of the provisions challenged in that suit. The Vote Nullification Provision provides that "[i]f the official canvass of any county has not been received by [the] deadline, the Secretary of State must proceed with the state canvass without including the votes of the missing county." *Id.*

We request that you unequivocally and specifically disavow all enforcement of the Vote Nullification Provision for the 2024 general election. That provision violates the U.S. Constitution under the *Anderson-Burdick* doctrine, as set forth in our Complaint. We ask that you instead commit to some other mechanism for ascertaining the vote counts of a county whose results are not certified, such as asking for a court to resolve the dispute or appointing an independent auditor. *See, e.g.*, Complaint ¶147 (setting forth alternatives to disenfranchising the votes of voters in the affected county).

As set forth in our Complaint, the Vote Nullification Provision cannot be constitutionally enforced. We therefore request that you unequivocally disavow all enforcement of it for the 2024 election cycle by 5pm on Friday, July 26, 2024. If you are unable or unwilling to do so, we will take that as evidence that your office intends to enforce the Vote Nullification Provision for the 2024 general election.

We look forward to your correspondence. If you have any questions, please do not hesitate to contact us.

Respectfully,

/s/ Andrew Gould
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